DOCUMENT RESUME

ED 307 456 CE 052 575

TITLE	Drug Testing. Federal Agency Plans for Testing Employees. Report to the Chairman, Subcommittee on Treasury, Postal Service, and General Government, Committee on Appropriations, U.S. Senate.
INSTITUTION	General Accounting Office, Washington, DC. General Government Div.
REPORT NO	GAO/GGD-89-51
PUB DATE	Mar 89
NOTE	11p.
AVAILABLE FROM	U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20877 (First five copies free; additional copies: $2.00 each; 100 or more: 25% discount).
PUB TYPE	Reports - General (140)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Drug Abuse; *Drug Legislation; *Drug Use Testing; Employer Employee Relationship; Employment Practices; *Federal Government; Federal Regulation; *Government Employees; Illegal Drug Use; Labor Legislation; Public Agencies

ABSTRACT

The drug-testing plans covering 11 of the 12 civilian federal cabinet-level agencies met the requirements of U.S. Department of Health and Human Services guidelines, and the guidelines themselves were found to contain the elements required by Public Law 100-71. However, the drug-testing plans differ, so employees may find different circumstances depending on where they work. The frequency at which employees in testing designated positions (TDPs) would be tested varies from an annual testing rate of 4 percent to 100 percent. Five plans called for the testing of all job applicants, not just those applying for TDPs. Most agencies planned to test for marijuana, cocaine, opiates, amphetamines, and phencyclidine. However, random testing in three departments will be limited to marijuana and cocaine. Most plans cite a specific list of disciplinary actions to be taken when an employee tests positive. None of the plans discussed how its implementation will be affected by the requirements of the Rehabilitation Act of 1973, which may protect employees who are drug abusers from adverse actions unless the agency can show impairment of the employee's job performance or a direct threat to property or others' safety. (CML)

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United States General Accounting Office

Report to the Chairman, Subcommittee on Treasury, Postal Service, and General Government, Committee on Appropriations, U.S. Senate

March 1989

DRUG TESTING

Federal Agency Plans for Testing Employees

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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-223280

March 1, 1989

The Honorable Dennis DeConcini
Chairman, Subcommittee on Treasury, Postal
Service, and General Government
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

Senate Report 100-387 on the fiscal year 1989 Treasury, Postal Service, and General Government Appropriations Bill instructed the General Accounting Office to study selected aspects of federal agency employee drug-testing plans. On November 16, 1988, we briefed the Subcommittee on the results of our prior work on the issue of drug-testing plans, including our June 16, 1988, testimony before the Civil Service and Human Resources Subcommittees of the House Committee on Post Office and Civil Service.[1] You asked that we summarize the content of the briefing and submit that summary to respond to the instruction in Senate Report 100-387.

Background

As part of the Drug Free Federal Workplace program, President Reagan issued Executive Order 12564 on September 15, 1986, requiring each executive branch agency to establish drug-testing programs for employees in sensitive positions. The Executive Order (1) gave the Office of Personnel Management (OPM) responsibility for issuing governmentwide guidance to agencies on implementing the Executive Order and (2) authorized the Department of Health and Human Services (HHS) to issue scientific and technical guidelines for the collection of specimens and laboratory analysis of the specimens. OPM issued its guidance in November 1986. HHS issued proposed guidelines in February 1987.

Because of concerns over aspects of the Executive Order, Congress included provisions in the 1987 Supplemental Appropriations Act (Public Law 100-71, July 11, 1987) that required that certain actions be taken before executive branch agencies could use appropriations to fund drug-testing program operations. Among other things, the act required each agency to develop a drug-testing plan in accordance with the Executive Order and other statutes. It also required HHS to (1) expand and issue its 1987 guidance in final form as mandatory guidelines, (2) certify that each agency had developed a plan, and (3) provide Congress with

[1] Federal Employee Drug Testing (GAO/T-GGD-88-40, June 16, 1988).

an agency-by-agency analysis of the plans. HHS published its final guidelines in April 1988. In May 1988, HHS officials certified 42 agency drug-testing plans and provided their analysis to Congress.

Results in Brief

In general we found that the HHS guidelines contained the federal workplace drug-testing program elements required by Public Law 100-71. Further, our review of the 21 plans issued by 11 of the 12 civilian cabinet level departments showed that each agency prepared a written drug-testing plan that followed the requirements of Public Law 100-71 and the guidelines.

Because of the discretion provided agencies in designing their drug-testing programs, however, the plans differ and, as a result, employees may face a different set of circumstances depending on where they work. Variations exist among agencies in such aspects as the positions subject to testing, the frequency of testing, the drugs for which agencies plan to test, and potential disciplinary actions. Although such differences might be explained by varying agency circumstances or needs, neither the HHS analysis of the plans nor the plans themselves address the rationale.

Objectives, Scope, and Methodology

Our objectives were to (1) determine whether the HHS guidelines and agency plans were in accordance with provisions of Public Law 100-71 and (2) where appropriate, provide our observations regarding the potential for disparities among agency drug-testing programs. To meet our objectives, we analyzed and compared the HHS guidelines and agency plans with the requirements in Public Law 100-71. We also compared the agency plans to identify similarities and differences among them.

Pursuant to the Appropriations Committee instruction and subsequent agreement with Committee representatives, we reviewed the HHS guidelines and 21 agency drug-testing plans covering 11 of the 12 civilian cabinet level agencies. The Department of Transportation was not required by Public Law 100-71 to prepare a plan prior to using appropriations because it had an ongoing drug-testing program in place at the time the law was passed. Two departments, Justice and Treasury, prepared separate plans for different agency components.

We did our work from November 1988 to January 1989 and in accordance with generally accepted government auditing standards.

The Supplemental Appropriations Act of 1987 Drug-Testing Provisions

To address concerns over federal employee drug testing, Congress included provisions in the 1987 Supplemental Appropriations Act (Public Law 100-71) that required certain actions before executive branch agencies could use appropriations to fund drug-testing program operations. Among other things, these provisions included the following requirements:

(1) HHS must certify that each agency has developed a plan for achieving a drug-free workplace, including a drug-testing plan in accordance with the Executive Order and applicable provisions of law such as the Civil Service Reform Act of 1978 (CSRA) and the Rehabilitation Act of 1973;

(2) HHS must develop, in addition to its 1987 guidelines, mandatory guidelines that establish comprehensive standards for laboratory drug testing and laboratory procedures, including standards that require the use of the best available technology and strict procedures governing the chain-of-custody of specimens; and

(3) HHS must specify the drugs for which federal employees will be tested, establish appropriate standards and procedures for periodic review of laboratories, and develop criteria for certification of laboratories.

In addition, HHS was required to submit to Congress a detailed agency-by-agency analysis relating to the (1) criteria and procedures to be applied in designating employees or positions for drug testing, (2) the position titles designated for random testing, and (3) the nature, frequency, and type of drug testing to be instituted.

In May 1988, HHS certified that the plans for the agencies cited in Public Law 100-71 had been prepared in accordance with the law. These agencies included

- the Executive Office of the President,
- each cabinet level department (except the Department of Transportation),
- the Environmental Protection Agency,
- the General Services Administration,
- the National Aeronautics and Space Administration,
- the Office of Personnel Management,
- the Small Business Administration,
- the United States Information Agency, and

- the Veterans Administration.

Because several of the agencies prepared separate plans for different agency components, the agencies accounted for a total of 42 separate drug-testing plans. Other executive branch agencies not specifically cited in Public Law 100-71 are also required to prepare plans before they implement drug-testing programs. As of January 1989, the Nuclear Regulatory Commission was the only other agency that had prepared a final plan.

HHS Guidelines

HHS issued its Mandatory Guidelines for Federal Workplace Drug Testing Programs on April 11, 1988. Our review showed that the guidelines address the provisions required in Public Law 100-71. Specifically, they provide for the following:

- The guidelines specify the drugs for which federal employees may be randomly tested. Agencies are required to test for marijuana and cocaine and have the discretion to also test for opiates, amphetamines, and phencyclidine (PCP).
- Specific chain-of-custody procedures are included in the guidelines and are aimed at assuring the integrity and security of the urine specimens. The procedures begin at the point of collection and continue throughout the process, including transportation to the analytical laboratory and time spent at the laboratory.
- The guidelines require agency programs to include both initial and confirmatory tests. The initial test is to consist of a screening test which meets applicable Food and Drug Administration standards. In instances where specimens are initially identified as positive, the presence of controlled substances in the specimen must be confirmed using gas chromatography/mass spectrometry techniques (GC/MS). GC/MS techniques are commonly recognized as the most reliable tests available today.
- The guidelines require that agencies purchase drug-testing services only from laboratories certified by HHS or by a private accrediting organization recognized by HHS. Certification indicates that the test results reported by the laboratory for the federal government meet the HHS technical standards. To become certified, a laboratory needs to apply to HHS, receive an initial on-site inspection, and successfully complete three rounds of performance tests. To maintain the HHS certification, the laboratory must successfully complete performance tests every other month and pass periodic on-site inspections by HHS. As of December 15, 1988, HHS had certified 10 laboratories.

Employees May Be Subject to Different Drug-Testing Circumstances

An Interagency Coordinating Group established under the aegis of the National Drug Policy Board developed a model plan for agencies to follow. All 21 of the plans that we reviewed adhered in general to the model plan and addressed the provisions of the Executive Order and applicable law. However, despite the general similarity in wording, our comparison of the plans indicates that individuals may face a different set of testing circumstances depending upon their agency. Although such differences might be explained by varying agency circumstances or needs, neither the HHS analysis of the plans nor the plans themselves address the rationale.

- Agencies differ in the testing designated positions (TDP) selected to be subject to random testing. For example, clerk typist positions having a critical-sensitive designation are identified as TDPs at the Department of Commerce. This designation is one of four categories used to classify positions in terms of national security risk. At HHS, this designation does not constitute a basis for identifying the position as a TDP. The proportion of the workforce designated as occupying TDPs also varied and ranged from less than 1 percent at the Department of Treasury's Bureau of Public Debt to 100 percent at the U.S. Marshals Service.
- The annual frequency at which TDP employees would be tested varies from an annual testing rate of 4 percent to 100 percent.
- Applicant testing, post-accident testing, and follow-up testing provisions are also not uniform. While the majority of plans indicate that only applicants for TDPs will be tested, five plans call for the testing of all job applicants, and one plan does not include any applicant testing. For post-accident testing, one criterion for requiring a drug test is the amount of damage done to property as a result of the accident. Depending on the agency, this monetary threshold has been set at values ranging from $200 at the U.S. Marshals Service to $10,000 at the Department of Agriculture.
- Applicants and employees under some plans will be screened for fewer drugs than in other agencies. The majority of agencies plan to test for the five drugs—marijuana, cocaine, opiates, amphetamines, and phencyclidine—specifically authorized in the HHS technical guidelines. However, random testing at the Department of Housing and Urban Development as well as random and applicant testing at HHS and the Department of Treasury's Savings Bond Division will be limited to marijuana and cocaine.

Disciplinary Actions for Employees With Confirmed Positive Tests

As part of its instructions to agencies on implementing the Executive Order, OPM's guidance requires agencies to initiate disciplinary action against employees who are found to use illegal drugs. The agency plans that we reviewed contain this requirement. For the most part, the plans follow the OPM guidance closely by citing a specific list of disciplinary actions that an agency is authorized to take upon the first confirmed determination that an employee uses illegal drugs. The actions range in severity from a written reprimand to removing the employee from service. With the exception of the U.S. Marshals' plan, which specifies that removal shall be proposed for a first finding of illegal drug use, agency plans do not provide any criteria as to what particular disciplinary action will be taken against an employee on the basis of a first-time, confirmed positive test.

None of the agency drug-testing plans we reviewed discuss how program implementation will be affected by requirements to observe employee rights under the CSRA or the Rehabilitation Act of 1973. Neither the OPM drug-testing guidelines nor the agency drug-testing plans address the CSRA stipulation that an agency taking a disciplinary action demonstrate a nexus or connection between the employee's off-duty conduct and job performance.

Additionally, the plans make no specific reference to the Rehabilitation Act, which may also protect employees who are drug abusers from adverse actions such as discharge unless the agency can show impairment of the employee's job performance or a direct threat to property or the safety of others.

As agreed with the Subcommittee, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time we will send copies to the Secretary of the Department of Health and Human Services, the Director of the Office of Personnel Management, congressional committees having an interest in drug-testing issues, and other interested parties. Additionally, we will make copies available to others upon request.

The major contributors to this report are listed in the appendix. Please contact me at 275-8676 if you or your staff have any questions concerning the report.

Sincerely yours,

L. Nye Stevens
Director, Government
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